

ENTERED

September 09, 2021

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WALTER C. SAENZ, *et al*,

Plaintiffs,

VS.

U. S. BANK, N.A.,

Defendant.

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CIVIL ACTION NO. 4:21-CV-661

ORDER

Pending before the Court is the Defendant U.S. Bank, N.A.'s Motion to Dismiss (Doc. No. 16).¹ The Plaintiffs have filed a response (Doc. No. 19) and the Defendant has replied (Doc. No. 20). Also pending is the Defendant's motion to strike the Plaintiffs' affirmative defenses to the Defendant's counterclaims (Doc. No. 17). The Plaintiffs have filed a response (Doc. No. 20) and the Defendant has replied (Doc. No. 22).


Having considered the briefing on the motion to dismiss, the Court has concluded that, pursuant to Federal Rule of Civil Procedure 12(d), the arguments within the motion to dismiss are more suited to a motion for summary judgment. The Defendant may file a motion for summary judgment based on the same arguments contained in the Motion to Dismiss any time before September 16, 2021. If such motion is filed, the Plaintiffs may file a response if they do so by the 21st day after the motion is filed. If no motion is filed or if the motion for summary judgment is denied, the Court will, in consultation with all parties, enter a scheduling order that will govern the case to its conclusion.

The Court hereby denies the Motion to Dismiss (Doc. No. 16) without prejudice.

¹ The Defendant previously moved to dismiss once before (Doc. No. 4), but the Plaintiff filed an amended complaint (Doc. No. 15). Accordingly, that motion to dismiss is hereby denied as moot.

In addition, the Court hereby denies the Motion to Strike (Doc. No. 17) without prejudice. At this juncture, a ruling on the motion to strike would not advance this litigation. If it wishes to do so, the Defendant may re-urge the arguments made in the motion to strike in its motion for summary judgment.

Signed at Houston, Texas, this 9th day of September, 2021.



Andrew S. Hanen
United States District Judge